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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 392/2014**

JAGDISH RAI

..... Appellant

Through: Ms. Chandrani Prasad, Ms. Mitali,
Mr. Chirag Mahalwal, Advs.

versus

OM PRAKASH & ORS

..... Respondents

Through: Mr. Mukesh Anand, Adv.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **01.02.2017**

1. The appellant has challenged the order dated 13th November, 2014 whereby the learned Additional District Judge has declined to restore the plaintiff's suit which was dismissed in default on 23rd August, 2014.
2. After hearing the parties for some time, this court is of the view that the learned Additional District Judge ought to have allowed the appellant's application for setting aside the order of dismissal in default and the plaintiff's suit ought to have been restored.
3. The appeal is allowed and the impugned order dated 23rd November, 2014 is restored to its original number.
4. Learned counsel for respondents no.1 to 3 submits that the appellant had delayed the matter before the Trial Court by not filing the partnership deed and not taking steps for service of respondents no.4 to 9.
5. Learned counsel for the appellant submits that the partnership deed is in possession of respondents no.1 to 3 who have admitted the same in their written statement. It is submitted that the appellant does not have the copy

of the partnership deed in their possession. It is further submitted that the appellant shall take all necessary steps for service of un-served respondents.

6. Learned counsel for respondents no.1 to 3 submits that he will take instructions whether respondents no.1 to 3 have the copy of the partnership deed or not.

7. The parties shall appear before the Trial Court on 27th March, 2017.

8. Learned counsels for the appellant as well as respondents no.1 to 3 have taken note of the said date and they undertake to appear before the Trial Court on the said date.

9. Learned counsel for the appellant submits that the appellant shall not delay the proceedings before the Trial Court in any manner and shall not seek unnecessary adjournment. The statement of learned counsel for the appellant is taken on record.

10. The Trial Court shall ensure that the parties are not permitted to delay the matter in any manner.

11. The Trial Court record be returned back forthwith.

12. Copy of this order be given *dasti* to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

FEBRUARY 01, 2017
rsk